

Message Text

UNCLASSIFIED

PAGE 01 USUN N 03788 01 OF 08 172151Z

71

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 OIC-02 FEA-01 ACDA-10 AGR-10

AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-04 ERDA-07 FMC-02 TRSE-00

H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02

OES-06 OMB-01 PA-02 PM-04 PRS-01 SP-02 SS-15 USIA-15

SAL-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 /192 W

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P 172107Z SEP 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 9224

UNCLAS SECTION 1 OF 8 USUN 3788

FROM US DEL LOS

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: AUGUST - SEPTEMBER 1976 - LOS CONFERENCE -

UNCLASSIFIED REPORT

BEGIN SUMMARY:

THE FIFTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA MET IN NEW YORK FROM AUGUST - SEPTEMBER 17, 1976. THE CONFERENCE DECIDED TO EMPHASIZE INFORMAL NEGOTIATION ON OUTSTANDING ISSUES IN THE THREE MAIN COMMITTEES, WITH A MORE DETAILED REVIEW OF THE DISPUTE SETTLEMENT TEXT IN THE INFORMAL PLENARY LEADING TO THE PREPARATION OF A REVISED DISPUTE SETTLEMENT TEXT. THE BASES OF WORK WERE THE REVISED SINGLE NEGOTIATING TEXTS ISSUED AT THE END OF THE SPRING SESSION BY THE CHAIRMAN OF THE MAIN COMMITTEES, AND A SINGLE NEGOTIATING TEXT ON DISPUTE SETTLEMENT ISSUED BY THE PRESIDENT OF THE CONFERENCE. IT WAS DECIDED THAT NO FURTHER REVISIONS OF

UNCLASSIFIED

PAGE 02 USUN N 03788 01 OF 08 172151Z

THE REVISED SINGLE NEGOTIATING TEXTS WOULD BE PROPOSED

BY THE CHAIRMEN OF THE COMMITTEES. HOWEVER, THE CHAIRMAN DID
ISSUE REPORTS THE LAST DAY OF THE SESSION.

THE THIRD COMMITTEE HAS TRADITIONALLY BEEN ABLE TO
HAVE SMALLER GROUPS OF EFFECTIVE SIZE FUNCTION ON A
PRAGMATIC BASIS. FOR THE FIRST TIME, THE SECOND COMMITTEE
WAS ABLE TO ESTABLISH SIMILAR LIMITED GROUPS OF
INTERESTED DELEGATIONS ON SELECTED ISSUES. HOWEVER, THE
FIRST COMMITTEE, ITS WORKSHOP, AND EVEN THE WORKSHOP'S
NEGOTIATING GROUP, FUNCTIONED IN EFFECT WITH VERY LARGE
NUMBERS OF DELEGATIONS PRESENT AT ALL TIMES. WHILE THE
DIFFICULTIES FACED IN OTHER COMMITTEES INDICATE THAT SMALLER
GROUPS ARE IN AND OF THEMSELVES NO GUARANTEE OF QUICK RES-
ULTS, THE ABSENCE OF A SUITABLE NEGOTIATING VEHICLE IN
THE FIRST COMMITTEE CLEARLY CONTRIBUTED TO THE PROBLEM.

THE PRESENT REVISED SINGLE NEGOTIATING TEXT
(RSNT) REPRESENTS A CONSENSUS ON A LARGE NUMBER OF ISSUES
BEFORE THE CONFERENCE. THIS TEXT HAS BEEN
MAINTAINED IN THIS SESSION AS THE BASIS FOR NEGOTIATIONS.
A BROAD CONSENSUS ALREADY EXISTS IN CERTAIN KEY AREAS
INCLUDING A 12-MILE TERRITORIAL SEA, UNIMPEDED PASSAGE
OF STRAITS, ESTABLISHING COASTAL STATE RESOURCE AND
OTHER RIGHTS IN A 200-MILE ECONOMIC ZONE, PROTECTING
NAVIGATIONAL RIGHTS AND ON MARINE POLLUTION. HOWEVER,
IMPORTANT ISSUES ARE OUTSTANDING; ON WHICH THE CONFERENCE
CONCENTRATED.

THE FIRST COMMITTEE DEVOTED MOST OF ITS TIME TO
THE QUESTION OF THE SYSTEM OF EXPLOITATION FOR DEEP
SEABED RESOURCES, EVALUATING THE PARALLEL ACCESS SYSTEM
PUT FORTH IN THE RSNT. IN AN ATTEMPT TO ACCOMMODATE
CONCERNS REGARDING THAT SYSTEM, SECRETARY KISSINGER
PROPOSED A PACKAGE APPROACH WHICH WOULD INCLUDE ASSURED ACCESS
IN ALL ITS ASPECTS TO DEEP SEABED MINING SITES BY ALL
NATIONS AND THEIR CITIZENS ALONG WITH A FINANCING ARRANGE-
MENT TO ENABLE THE PROPOSED ENTERPRISE (THE INDEPENDENT
OPERATING ARM OF THE INTERNATIONAL SEABED AUTHORITY) TO
GET INTO BUSINESS. AS PART OF THAT PACKAGE HE FURTHER
PROPOSED THAT THERE COULD BE A REVIEW, IN PERHAPS 25 YEARS,
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 USUN N 03788 01 OF 08 172151Z

TO DETERMINE IF THE PROVISIONS OF THE TREATY REGARDING
THE SYSTEM OF SEABED EXPLOITATION WERE WORKING ADEQUATELY.
THIS WAS A SIGNIFICANT MOVE WHICH GENERATED CONSIDERABLE
INTEREST WHICH WE BELIEVE CAN BE TRANSFORMED AT THE NEXT
SESSION INTO SPECIFIC TREATY LANGUAGE. A NUMBER OF DELE-
GATIONS, REPRESENTING ALL CONCERNED GROUPS, HAVE EXPRESSED
TO US THEIR BELIEF THAT OUR PACKAGE PROPOSAL REPRESENTED
A CONSTRUCTIVE CONTRIBUTION TO THE NEGOTIATIONS. THIS

REACTION IS ENCOURAGING AND WE INTEND IN THE SAME SPIRIT TO FOLLOW-UP THIS INITIATIVE BOTH DURING THE PERIOD BETWEEN SESSIONS AND AT THE NEXT SESSION. SOME DELEGATIONS CHOSE TACTICS OF CONFRONTATION. THE SECRETARY NOTED THAT SUCH TACTICS CANNOT WORK AND WILL INEVITABLY LEAD TO DEADLOCK AND UNILATERAL ACTION.

THE FIRST COMMITTEE DID NOT HAVE TIME TO DISCUSS THE QUESTIONS OF THE DECISION-MAKING PROCESS OF THE AUTHORITY, INCLUDING THE ASSEMBLY AND THE COUNCIL, OR OTHER MATTERS IN DETAIL.

THE SECOND COMMITTEE SET UP NEGOTIATING GROUPS TO DEAL WITH THE FOLLOWING "PRIORITY QUESTIONS."

- (I) THE LEGAL STATUS OF THE EXCLUSIVE ECONOMIC ZONE. RIGHTS AND DUTIES OF THE COASTAL STATE AND OF OTHER STATES IN THE EXCLUSIVE ECONOMIC ZONE.
- (II) RIGHTS OF ACCESS AND LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT.
- (III) PAYMENTS AND CONTRIBUTIONS IN RESPECT OF THE EXPLOITATION OF THE CONTINENTAL SHELF BEYOND 200 MILES.
- (IV) DEFINITION OF THE OUTER EDGE OF THE CONTINENTAL MARGIN.

LATER IN THE SESSION, NEGOTIATING GROUPS WERE SET UP ON OTHER MATTERS.

SECRETARY KISSINGER DISCUSSED THE PROBLEM OF THE STATUS OF THE ECONOMIC ZONE WITH OTHER DELEGATIONS, EMPHASIZING THE IMPORTANCE OF FINDING AN ACCOMMODATION THAT PROTECTS THE RIGHTS OF COASTAL STATES WHILE PRESERVING THE HIGH SEAS FREEDOMS OF ALL STATES.

UNCLASSIFIED

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PAGE 04 USUN N 03788 01 OF 08 172151Z

IN THE THIRD COMMITTEE, MOST TIME WAS DEVOTED TO THE PROBLEM OF SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE. WE PROPOSED A COMPROMISE WHICH WILL GIVE THE COASTAL STATES THE RIGHT TO CONTROL MARINE SCIENTIFIC RESEARCH DIRECTLY RELATED TO RESOURCE EXPLOITATION BUT WHICH WILL ENSURE THE RIGHT TO CONDUCT OTHER FORMS OF MARINE SCIENTIFIC RESEARCH. SECRETARY KISSINGER REVIEWED THE PROBLEM WITH A NUMBER OF OTHER DELEGATIONS. WHILE THE RSNT ON MARINE POLLUTION COMMANDS GENERAL SUPPORT, ATTENTION WAS DEVOTED TO CERTAIN PARTICULAR PROBLEMS SUCH AS STANDARD-SETTING IN THE TERRITORIAL SEA.

THE PLENARY, IN INFORMAL SESSION, ENGAGED IN A DETAILED REVIEW OF THE ARTICLES ON SETTLEMENT OF DISPUTES.

ON THIS BASIS, THE PRESIDENT OF THE CONFERENCE PLANS
TO ISSUE A REVISED SINGLE NEGOTIATING TEXT ON THE MATTER.
THE DEBATE INDICATES THAT THE MAJOR ISSUES REVOLVE AROUND
THE CHOICE OF PROCEDURES FOR DISPUTE SETTLEMENT AND THE
EXTENT OF DISPUTE SETTLEMENT IN THE ECONOMIC ZONE.

THE CHAIRMEN OF COMMITTEES 2 AND 3 HAVE EACH COMMENTED
ON THE INTER-RELATIONSHIPS BETWEEN THE WORK OF THEIR
COMMITTEES AND OTHER CONFERENCE WORK, WHICH OF COURSE,
CAN BE A COMPLICATING FACTOR.

IN HIS STATEMENT ON THE CONCLUSION OF THE SESSION,
SECRETARY KISSINGER COMMENTED ON VARIOUS ISSUES, AND THEN
CONCLUDED:

"WE BELIEVE THAT EQUITABLE RESOLUTION OF THESE AND
THE OTHER KEY ISSUES IN THESE NEGOTIATIONS CAN BE FOUND.
UNLESS THIS IS THE CASE, VARIOUS GOVERNMENTS MAY CONCLUDE
AGREEMENT IS NOT POSSIBLE, RESULTING IN UNILATERAL ACTION
WHICH CAN LEAD TO CONFLICT OVER THE USES OF OCEAN SPACE.

"THE UNITED STATES HAS A MAJOR INTEREST AS A GLOBAL
POWER IN PREVENTING SUCH CONFLICT AND THUS

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PAGE 01 USUN N 03788 02 OF 08 172149Z

71

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 OIC-02 FEA-01 ACDA-10 AGR-10

AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-04 ERDA-07 FMC-02 TRSE-00

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OES-06 OMB-01 PA-02 PM-04 PRS-01 SP-02 SS-15 USIA-15

SAL-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 /192 W

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P 172107Z SEP 76

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TO SECSTATE WASHDC PRIORITY 9225

UNCLAS SECTION 2 OF 8 USUN 3788

FROM LOS DEL

WILL CONTINUE TO SEEK OVERALL SOLUTIONS ACCEPTABLE TO ALL GROUPS OF COUNTRIES. IN SO DOING, HOWEVER, WE WILL CONTINUE VIGOROUSLY TO SAFEGUARD ESSENTIAL AMERICAN INTERESTS. WE WILL WORK COOPERATIVELY WITH OTHER NATIONS, BUT WE EXPECT A RECIPROCAL ATTITUDE OF GOOD WILL AND REASONABLENESS. THERE ARE LIMITS BEYOND WHICH THE U.S. WILL NOT GO, AND WE ARE CLOSE TO SUCH LIMITS NOW.

"WE MUST MOVE TOWARD BUSINESSLIKE NEGOTIATIONS AND TOWARD A RECOGNITION THAT THE ALTERNATIVE TO A TREATY WOULD SERVE NO NATIONAL OR INTERNATIONAL COMMUNITY INTEREST. I CONTINUE TO BELIEVE THAT A LAW OF THE SEA CONVENTION CAN BE ACHIEVED. THE UNITED STATES WILL SEEK TO BUILD ON THE PROGRESS MADE TO DATE AND WILL CONTINUE ITS INTENSIVE EFFORTS TO ACHIEVE A TREATY. A SUCCESSFUL OUTCOME WILL BRING MAJOR BENEFITS TO THIS NATION AND HELP SHAPE A MORE PEACEFUL AND PROSPEROUS INTERNATIONAL COMMUNITY."

UNCLASSIFIED

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PAGE 02 USUN N 03788 02 OF 08 172149Z

THE GENERAL COMMITTEE DECIDED ON THE FOLLOWING RECOMMENDATIONS TO THE PLENARY REGARDING FUTURE WORK AND THE NEXT SESSION TO BE HELD IN NEW YORK:

(1) THE CONFERENCE SHOULD HOLD ANOTHER SESSION IN 1977 FOR SEVEN WEEKS, WITH THE POSSIBILITY OF EXTENDING IT TO EIGHT WEEKS; (2) THE SESSION SHOULD START ON EITHER 16, 23 OR 30 MAY; (3) THE FIRST TWO OR THREE WEEKS OF THE SESSION, SHOULD BE DEVOTED TO MATTERS BEING DEALT WITH BY THE FIRST COMMITTEE TO ENABLE THAT COMMITTEE TO REACH THE SAME STAGE AS THE OTHER TWO COMMITTEES, BUT OTHER MEETINGS SHOULD NOT BE PRECLUDED PROVIDED THERE WAS NO INTERFERENCE WITH THE FIRST COMMITTEE AND WITH THE PARTICIPATION OF HEADS OF DELEGATIONS IN THAT COMMITTEE'S WORK; (4) DURING THE FOLLOWING TWO WEEKS OF THE SESSION, THE SECOND AND THIRD COMMITTEES SHOULD MEET ALONG WITH THE FIRST; (5) DISCUSSIONS SHOULD BE HELD IN PLENARY MEETINGS ON THE SETTLEMENT OF DISPUTES AS WELL AS FORMAL DISCUSSION ON THE PREAMBLE AND FINAL CLAUSES OF THE CONVENTION; (6) IN THE SIXTH WEEK, THE PRESIDENT AND CHAIRMEN OF THE MAIN COMMITTEES SHOULD PREPARE AN INFORMAL SINGLE COMPOSITE TEXT, ON THE BASIS OF WHICH THE CONFERENCE SHOULD ATTEMPT TO PREPARE A DRAFT CONVENTION ON WHICH IT SHOULD ACT IF POSSIBLE BY CONSENSUS AND WITHOUT RESORT TO VOTING.

AS REGARDS THE INTER-SESSIONAL CONSULTATIONS, THE COMMITTEE AGREED TO RECOMMEND THAT THE COMMITTEE CHAIRMEN OR INDIVIDUAL DELEGATIONS SHOULD ORGANIZE SUCH CONSULTATIONS IF THEY WISHED TO DO SO. THE SECRETARIAT SHOULD INFORM ALL MEMBERS AND SHOULD TRANSMIT THE RESULTS OF ANY SUCH CONSULTATIONS TO ALL MEMBERS.

THE CONFERENCE AGREED.

END SUMMARY.

PART I OF TOTAL LOS REPORT

COMMITTEE I

THE UNITED STATES AND A NUMBER OF OTHER COUNTRIES
UNCLASSIFIED

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PAGE 03 USUN N 03788 02 OF 08 172149Z

EXPECTED THAT THE MAJOR ISSUES TO BE DISCUSSED IN COMMITTEE I DURING THIS SESSION WOULD BE THOSE WHICH HAD NOT BEEN THE SUBJECT OF PREVIOUS NEGOTIATIONS IN THE COMMITTEE: THE COMPOSITION AND VOTING MECHANISM OF THE COUNCIL OF THE AUTHORITY; THE STATUTE OF THE ENTERPRISE; AND THE STATUTE OF THE SEABED TRIBUNAL. THE GROUP OF 77, HOWEVER, INSISTED UPON REOPENING BASIC ISSUES. THE FIRST ISSUE WHICH WAS DISCUSSED WAS THE SYSTEM OF EXPLOITATION OF SEABED MINERALS. AS IT TURNED OUT, THIS SUBJECT WAS THE ONLY ITEM ADDRESSED DURING THE SESSION.

THE FORMAL POSITION OF THE GROUP OF 77 WAS THAT THE SYSTEM OF EXPLOITATION PREVIOUSLY NEGOTIATED AND CONTAINED IN THE REVISED SINGLE NEGOTIATING TEXT (RSNT) WAS NOT ACCEPTABLE. THE RSNT PROVISIONS ESTABLISH A PARALLEL SYSTEM OF EXPLOITATION WITH BOTH THE ENTERPRISE OF THE AUTHORITY, AND STATES AND PRIVATE ENTITIES HAVING ACCESS ON EQUAL TERMS TO THE EXPLOITATION OF THE SEABED. THE GROUP OF 77 COUNTER-PROPOSED A SYSTEM WHICH WOULD GIVE THE AUTHORITY BROAD DISCRETIONARY POWERS TO REFUSE TO CONCLUDE CONTRACTS WITH STATES AND THEIR SPONSORED PRIVATE ENTITIES AND THE POWER NOT TO PEEN THE AREA AT ALL. UNDER THIS PROPOSAL, THE FACADE OF A PARALLEL SYSTEM WAS MAINTAINED, BUT THE ENTERPRISE WAS GIVEN CLEAR PREEMINENCE AND STATE AND PRIVATE ACCESS WAS NOT GUARANTEED.

IN RESPONSE TO THIS PROPOSAL, THE UNITED STATES, SUPPORTED BY A NUMBER OF OTHER INDUSTRIALIZED COUNTRIES; AND THE SOVIET UNION, SUPPORTED BY OTHER INDUSTRIALIZED STATES, SUBMITTED DRAFT ARTICLES ON A SYSTEM OF EXPLOITATION. THE UNITED STATES IN MAKING ITS PROPOSAL EMPHASIZED THAT THE PARALLEL OR DUAL ACCESS SYSTEM WAS A METHOD OF ACCOMMODATING THE ESSENTIAL INTERESTS OF ALL STATES

AND THE INTERNATIONAL COMMUNITY IN GENERAL.

UNDER THE US SYSTEM, THE AUTHORITY IS GIVEN SUPERVISION OVER ALL ACTIVITIES OF RESOURCE EXPLORATION AND EXPLOITATION IN THE AREA. THE AUTHORITY WOULD ENTER INTO CONTRACTS WITH THE ENTERPRISE ON THE ONE HAND, AND STATES AND PRIVATE PARTIES ON THE OTHER FOR THE EXPLOITATION OF SEABED RESOURCES. THE AUTHORITY WOULD BE REQUIRED TO ENTER INTO SUCH CONTRACTS UNLESS THE APPLICANT FAILED TO MEET

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PAGE 04 USUN N 03788 02 OF 08 172149Z

A LIST OF SPECIFIC AND EXHAUSTIVE CRITERIA CONTAINED IN THE TREATY OR ITS ANNEX. THE SOVIET UNION'S PROPOSAL CALLED FOR EXPLOITATION OF THE AREA BOTH BY THE AUTHORITY DIRECTLY AND BY STATES AND OTHER ENTITIES UNDER THE EFFECTIVE FISCAL AND ADMINISTRATIVE SUPERVISION OF THE AUTHORITY.

THE DISCUSSIONS IN THE COMMITTEE AND ITS SUBSIDIARY BODIES FOCUSED ON THESE THREE PROPOSALS, WHICH ESSENTIALLY INVOLVED THE SYSTEM OF EXPLOITATION APPLICABLE TO STATES AND PRIVATE PARTIES AND DID NOT TOUCH UPON ASPECTS OF ENTERPRISE OPERATIONS WITHIN THE CONTEXT OF A PARALLEL SYSTEM. SINCE THE QUESTION OF THE METHODS OF OPERATION FOR THE ENTERPRISE WAS NOT IN THE FOREFRONT OF THE COMMITTEE'S WORK, ITS CONSIDERATION OF THE PARALLEL SYSTEM OF EXPLOITATION BECAME SOMEWHAT UNBALANCED, WITH UNDUE EMPHASIS BEING PLACED IN ITS DELIBERATIONS ON ONLY THE STATE AND PRIVATE PARTY SIDE OF THE ACCESS SYSTEM ESTABLISHED IN THE RSNT. ACCORDINGLY, MANY OF THE ISSUES CONCERNED WITH THE SYSTEM OF EXPLOITATION WHICH HAD FORMED AN INTEGRAL PART OF THE COMPROMISE CONTAINED IN THE RSNT RE-EMERGED AS ISSUES IN DISPUTE BY THE GROUP OF 77.

TOWARDS THE END OF THE SESSION, HOWEVER, GREATER INTEREST WAS EXPRESSED IN THE POTENTIAL FOR STRENGTHENING THE ABILITY OF THE ENTERPRISE TO FUNCTION WITHIN THE

UNCLASSIFIED

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PAGE 01 USUN N 03788 03 OF 08 172207Z

71

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 OIC-02 FEA-01 ACDA-10 AGR-10

AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00

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H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02

OES-06 OMB-01 PA-02 PM-04 PRS-01 SP-02 SS-15 USIA-15

SAL-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 /192 W

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P 172107Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9226

UNCLAS SECTION 3 OF 8 USUN 3788

FROM LOS DEL

CONTEXT OF A PARALLEL SYSTEM SUCH AS THAT ESTABLISHED
IN THE RSNT, A TREND THAT WAS NO DOUBT STIMULATED
BY THE COMPROMISE PROPOSALS MADE IN THIS AREA
BY SECRETARY KISSINGER DURING HIS SEPTEMBER 1-2 VISIT
AT THE CONFERENCE. THE SECRETARY NOTED THAT MANY
COUNTRIES HAD EXPRESSED DOUBTS ABOUT THE PARALLEL SYSTEM
ON THE GROUNDS THAT IT DID NO GOOD TO SET ASIDE PART
OF THE MINE SITES FOR THE AUTHORITY IF IT DID NOT POSSESS
THE FINANCIAL RESOURCES OR THE TECHNOLOGY TO EXPLOIT
THESE SITES. IN VIEW OF THIS CONCERN, THE SECRETARY SAID
THAT THE UNITED STATES GOVERNMENT WOULD BE PREPARED TO
AGREE TO A MEANS OF FINANCING THE ENTERPRISE SO THAT IT
COULD BEGIN MINING OPERATIONS IN THE SAME TIMEFRAME THAT
STATE AND PRIVATE OPERATORS COULD BEGIN EXPLOITATION OF
THE SEABED.

THE SECRETARY ALSO NOTED THAT THE CONCERNS OF SOME
DELEGATIONS THAT IT WAS PREMATURE TO ESTABLISH A PERMANENT
UNCLASSIFIED

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PAGE 02 USUN N 03788 03 OF 08 172207Z

REGIME FOR THE DEEP SEABEDS IN LIGHT OF THE MANY UNKNOWN
IN THIS FIELD, AND HE SUGGESTED PERIODIC REVIEW CONFERENCES
-- PERHAPS AT TWENTY-FIVE YEAR INTERVALS -- IN WHICH THE
SYSTEM COULD BE REEXAMINED, ALTHOUGH EXISTING CONTRACTS
WOULD, OF COURSE, BE RESPECTED. THE SECRETARY EMPHASIZED
THAT THESE NEW PROPOSALS WERE RESPONSIVE TO THE LEGITIMATE
CONCERNS OF THE GROUP OF 77 AND THAT WE NOW REQUIRED

SIMILAR RESPONSES TO OUR CONCERNS, PARTICULARLY ON THE ISSUES OF GUARANTEED ACCESS, AVOIDANCE OF PRODUCTION CONTROLS AND A SUITABLE ASSEMBLY AND COUNCIL.

THESE PROPOSALS OF THE SECRETARY WERE NOT DISCUSSED WITHIN COMMITTEE I BECAUSE OF THE LIMITED TIME REMAINING IN THE SESSION, BUT A NUMBER OF DELEGATIONS EXPRESSED INTEREST AND A DESIRE TO PURSUE THE SUBJECTS MENTIONED BY THE SECRETARY IN GREATER DETAIL AT THE NEXT SESSION. FOLLOWING THE SECRETARY'S INITIATIVES, A MARKED CHANGE OCCURRED IN THE NEGOTIATING ATMOSPHERE OF COMMITTEE I IN THAT THE TENDENCY TO CONSIDER STATE AND PRIVATE PARTY ACCESS IN ISOLATION WAS REDUCED, A MORE CONSTRUCTIVE WILLINGNESS TO ADDRESS THE ENTIRE COMPLEX OF ISSUES INVOLVED IN THE SYSTEM OF EXPLOITATION APPEARED.

OUTLOOK

THE OUTLOOK FOR THE NEGOTIATIONS IN COMMITTEE I IS UNCLEAR. IF ONE CHOOSES TO LOOK ONLY AT THE NEGATIVE FACTORS, THE PICTURE IS GLUM INDEED: THIS SESSION PRODUCED NO CONCRETE RESULTS, AND THERE IS LITTLE HARD EVIDENCE THAT THE APPARENT GAP IN POSITIONS ON THE SYSTEM OF EXPLOITATION WAS NARROWED; IN ADDITION TO THE SYSTEM OF EXPLOITATION DISCUSSED AT THIS SESSION, THERE ARE MAJOR ISSUES YET TO BE NEGOTIATED, SUCH AS THE COMPOSITION AND DECISION-MAKING PROCEDURES OF THE COUNCIL. FURTHER, MEMBERS OF THE GROUP OF 77 HAVE IDENTIFIED OTHER ISSUES OF CONCERN, SUCH AS THE POWERS AND VOTING PROCEDURES IN THE ASSEMBLY, ITS RELATIONSHIP TO THE COUNCIL, PRODUCTION CONTROLS, AND THE DISPUTE SETTLEMENT MECHANISM IN COMMITTEE I. THESE ARE COMPLEX ISSUES WHICH WILL TAKE MUCH TIME TO NEGOTIATE UNLESS PROCEDURES CAN BE DEVELOPED WHICH PERMIT NEGOTIATIONS AMONG REPRESENTATIVE GROUPS.

UNCLASSIFIED

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PAGE 03 USUN N 03788 03 OF 08 172207Z

MOREOVER, A PARTICULARLY DISTURBING DEVELOPMENT AT THIS SESSION WAS THE INDICATION THAT A FEW DEVELOPING COUNTRIES FOR THE FIRST TIME IN THE NEGOTIATIONS ARE CONSIDERING SUPPORT OF A STATE QUOTA OR ANTI-MONOPOLY PROVISION, A TREND THAT WOULD SERIOUSLY IMPEDE THE CHANCES FOR REACHING AN ACCEPTABLE DEEP SEABED ACCOMMODATION.

ON THE OTHER HAND, THERE ARE POSITIVE FACTORS; IT IS APPARENT THAT MANY OF THE PROBLEMS THIS SESSION WERE CAUSED BY THE INSUFFICIENT TIME AVAILABLE BETWEEN THE TWO NEW YORK MEETINGS IN WHICH TO DIGEST THE WORK OF THE EARLIER CONFERENCE AND TO FORMULATE NEW POSITIONS. IN ADDITION, AT THE END OF THIS SESSION THERE APPEARED TO BE WIDESPREAD RECOGNITION THAT THE COMMITTEE COULD NOT AFFORD

ANOTHER UNPRODUCTIVE MEETING SUCH AS THIS ONE, AND THAT AT THE NEXT SESSION DELEGATIONS AND GROUPS MUST COME PREPARED TO MAKE THE HARD POLITICAL COMPROMISES NECESSARY TO REACH AGREEMENT. MOREOVER, WE BELIEVE THAT MOST DELEGATIONS HAVE A BETTER APPRECIATION OF THE MINIMUM REQUIREMENTS OF THE VARIOUS GROUPS AND RECOGNIZE THAT THE SUBSTANCE OF THE RSNT ON MANY OF THE ISSUES INVOLVED IN THE SYSTEM OF EXPLOITATION REPRESENTS THE PROBABLE OUTLINE OF A FINAL COMPROMISE SETTLEMENT WHICH COULD MEET THE ESSENTIAL NEEDS OF ALL GROUPS IN THE ABSENCE OF IDEALOGY AND GROUP POLITICS.

AS IT TURNED OUT, THIS SESSION HAVE AN OPPORTUNITY TO THOSE DELEGATIONS IN THE GROUP OF 77 HOLDING MORE EXTREME POSITIONS TO DOMINATE THE 77 AND ATTEMPT TO OBTAIN FURTHER CONCESSIONS OF SUBSTANCE FROM THE INDUSTRIALIZED COUNTRIES. IT BECAME APPARENT THAT THERE IS NO FURTHER GIVE IN THESE POSITIONS, HOWEVER, AND TOWARD THE END, MODERATING INFLUENCES IN THE UN BEGAN TO EMERGE VOCALLY AND RESUME LEADERSHIP. IF THIS PROCESS CONTINUES, WE MAY FIND SOMEWHAT BETTER CLIMATE FOR NEGOTIATION AT THE NEXT SESSION. NEVERTHELESS, IT MUST BE RECOGNIZED THAT THE ISSUES WHICH DID NOT COME UP AT THIS SESSION ARE AT LEAST AS DIFFICULT AND IMPORTANT AS THE SYSTEM OF EXPLOITATION AND THAT DURING THIS SESSION THE GROUP OF 77 ADOPTED (THOUGH THEY DID NOT TABLE) VERY TOUGH, EXTREMIST POSITIONS ON THEM. THESE POSITIONS UNLESS MODERATED

UNCLASSIFIED

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PAGE 04 USUN N 03788 03 OF 08 172207Z

PRIOR TO THE NEXT SESSION COULD CAUSE THE NEXT SESSION TO END IN STALEMATE TOO.

IT SHOULD BE NOTED, AS MENTIONED ABOVE, THAT THERE IS SOME RECOGNITION THAT THE NEGOTIATING DIFFICULTIES IN COMMITTEE I MAY BE PARTIALLY ATTRIBUTABLE TO THE PROCEDURES IT HAS UTILIZED, AS WELL AS TIMING FACTORS. IN THIS CONNECTION, THE FINAL REPORT OF THE CHAIRMAN OF COMMITTEE I, PAUL ENGO, EMPHASIZED THAT NEW PROCEDURAL APPROACHES, SUCH AS VOTING, MAY, IN HIS VIEW, BE NEEDED AT THE NEXT SESSION IN ORDER TO ENCOURAGE DELEGATIONS TO TAKE THE FINAL DECISIONS NECESSARY TO PRODUCE WIDESPREAD AGREEMENT.

UNCLASSIFIED

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UNCLASSIFIED

PAGE 01 USUN N 03788 04 OF 08 172214Z

71

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 OIC-02 FEA-01 ACDA-10 AGR-10

AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-04 ERDA-07 FMC-02 TRSE-00

H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02

OES-06 OMB-01 PA-02 PM-04 PRS-01 SP-02 SS-15 USIA-15

SAL-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 /192 W

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P 172107Z SEP 76

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UNCLAS SECTION 4 OF 8 USUN 3788

FROM US DEL LOS

COMMITTEE II

PROCEDURES

ALL NEGOTIATING AT THIS SESSION WAS CONDUCTED IN OPEN-ENDED NEGOTIATING GROUPS ESTABLISHED BY THE CHAIRMAN, AND IN SMALL GROUPS, WHEN IT APPEARED THAT THE NEGOTIATING GROUPS HAD CARRIED ISSUES AS FAR AS POSSIBLE. THE ESSENTIAL OBJECTIVE WAS TO DEAL INTENSIVELY WITH ISSUES IDENTIFIED BY THE COMMITTEE AS PRIORITY ISSUES. INITIALLY, THE NEGOTIATING GROUPS WERE SET UP TO DEAL WITH FOUR QUOTE PRIORITY UNQUOTE ISSUES, I.E., THE LEGAL STATUS OF THE ECONOMIC ZONE AND THE RIGHTS AND DUTIES OF STATES IN THE ZONE; THE OUTER LIMIT OF CONTINENTAL MARGIN AND REVENUE SHARING; AND ACCESS TO THE SEA BY LANDLOCKED STATES. SUBSEQUENTLY, TWO ADDITIONAL GROUPS WERE ESTABLISHED TO DEAL WITH STRAITS, AND WITH DELIMITATION OF THE TERRITORIAL SEA,

UNCLASSIFIED

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PAGE 02 USUN N 03788 04 OF 08 172214Z

EXCLUSIVE ECONOMIC ZONE, AND CONTINENTAL SHELF BETWEEN OPPOSITE AND ADJACENT STATES. SMALL GROUPS, OF THIRTY

STATES EACH, FURTHER DISCUSSED THE FIRST THREE ISSUES, AND AN INFORMAL GROUP OF COASTAL STATES AND LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS) WAS FORMED OUTSIDE THE CONFERENCE STRUCTURE TO DEAL WITH ACCESS TO FISHERY RESOURCES IN THE ZONE BY LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES.

STATUS OF THE ECONOMIC ZONE

WITHOUT A DOUBT, THE MOST IMPORTANT OUTSTANDING ISSUE FOR THE UNITED STATES IN COMMITTEE II WAS, AND REMAINS, THE JURIDICAL STATUS OF THE ECONOMIC ZONE. THE US OBJECTIVE IN THIS REGARD IS TO RETAIN THIS TRADITIONAL HIGH SEAS STATUS OF THE ZONE, EXCEPT FOR RIGHTS OVER RESOURCES AND OTHER LIMITED RIGHTS (WHICH HAD PREVIOUSLY BEEN HIGH SEAS FREEDOMS) ASSIGNED TO COASTAL STATES BY THE PROVISIONS OF THE TREATY. THIS OBJECTIVE HAS BEEN MADE MORE DIFFICULT BECAUSE: (1) THE PRESENT REVISED SINGLE NEGOTIATING TEXT (RSNT) CLEARLY STATES THAT THE ECONOMIC ZONE IS NOT HIGH SEAS, AND (2) IN HIS INTRODUCTORY NOTE TO THE RSNT, THE CHAIRMAN OF THE SECOND COMMITTEE WROTE THE FOLLOWING:

QUOTE NOR IS THERE ANY DOUBT THAT THE EXCLUSIVE ECONOMIC ZONE IS NEITHER THE HIGH SEAS NOR THE TERRITORIAL SEA. IT IS A ZONE SUI GENERIS. UNQUOTE

HE SUGGESTED THAT THE SOLUTION WAS TO BE FOUND IN ADJUSTING THE ARTICLES DEALING WITH THE RIGHTS AND DUTIES OF COASTAL STATES IN THE ZONE, AND THOSE OF OTHER STATES.

THE US MADE CLEAR THAT THE PROVISIONS OF THE RSNT ON THIS SUBJECT ARE UNACCEPTABLE AS WRITTEN AND THAT WE CANNOT AGREE TO ANY TEXT WHICH MAKES IT CLEAR THAT THE ZONE IS NOT HIGH SEAS. ON THE CONTRARY, THE TEXT MUST SOMEHOW EXPLICITLY ACCORD HIGH SEAS STATUS TO THE ZONE BUT WITH THE RECOGNITION THAT THE ZONE IS NOT HIGH SEAS WITH RESPECT TO THE EXERCISE OF COASTAL STATE RIGHTS PROVIDED FOR IN THE TREATY. IN ADDITION, THE UNCLASSIFIED

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PAGE 03 USUN N 03788 04 OF 08 172214Z

SUMMARY OF COASTAL STATE RIGHTS IN THE ZONE MUST BE MADE CONSISTENT WITH THE SUBSTANTIVE ARTICLES.

THE NEGOTIATIONS HAVE BEEN MADE STILL MORE DIFFICULT BY THE EXTREMISTS OF THE TERRITORIALIST GROUP WHO HAVE INSISTED THAT THE ZONE BE CHARACTERIZED AS ONE OF NATIONAL JURISDICTION IN WHICH OTHER STATES ENJOY ONLY SUBORDINATE RIGHTS OF NAVIGATION, OVERFLIGHT, AND COMMUNICATION.

MORE MODERATE COASTAL STATES WORKED AT THIS SESSION OF THE CONFERENCE TO SEEK AN ACCOMMODATION BY EXPERIMENTING WITH VARIOUS FORMULATIONS WHICH MIGHT MORE SATISFACTORILY SPECIFY THE RIGHTS AND DUTIES OF STATES IN THE ZONE.

DURING TWO VISITS TO THE CONFERENCE, SECRETARY KISSINGER MET WITH VARIOUS KEY DELEGATIONS ON THIS SUBJECT, STRESSING THE IMPORTANCE OF THE ISSUE TO THE UNITED STATES, ELABORATING AGAIN THE US POSITION ON THE ISSUE AS SET FORTH ABOVE, AND ENCOURAGING MODERATE DELEGATIONS TOWARD AN ACCEPTABLE ACCOMMODATION.

THE CONTINENTAL MARGIN

TWO QUESTIONS WERE FOCUSED ON DURING THE NEGOTIATIONS. THE FIRST WAS THE DEFINITION OF THE OUTER LIMITS OF THE CONTINENTAL MARGIN WHERE IT EXTENDS BEYOND 200 MILES, AND THE SECOND INVOLVED REVENUE SHARING FROM MINERAL EXPLOITATION ON THE MARGIN BEYOND 200 NAUTICAL MILES.

THE RESOLUTION OF THESE ISSUES IS IMPORTANT IN CLEARING THE WAY TO A SUCCESSFUL CONCLUSION OF A TREATY; ALTHOUGH THE US DOES NOT HAVE AN EXTENSIVE MARGIN BEYOND 200 MILES. SEVERAL OTHER CONFERENCE PARTICIPANTS, WITH VERY BROAD MARGINS, CONSIDER THIS ISSUE OF GREAT IMPORTANCE.

THE TWO GROUPS MOST SERIOUSLY AFFECTED BY THESE ISSUES ARE THE BROAD-MARGIN STATES, WHO FAVOR EXCLUSIVE
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 USUN N 03788 04 OF 08 172214Z

CONTROL OVER RESOURCES THROUGHOUT THE BROADDEST REACHES OF THE MARGIN, AND NARROW MARGIN STATES (INCLUDING LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES) WHO WISH TO ENSURE THAT SIGNIFICANT RESOURCES BE RETAINED FOR THE COMMON HERITAGE OF MANKIND.

THE US HAS SUPPORTED A COMPROMISE WHICH WOULD DEFINE THE LEGAL LIMIT OF THE CONTINENTAL MARGIN WHERE IT EXTENDS BEYOND 200 MILES, EITHER AT A FIXED DISTANCE FROM THE FOOT OF THE SLOPE, OR AT A FIXED THICKNESS OF SEDIMENT. AS A NECESSARY ADJUNCT TO THIS FORMULA, THE TREATY WOULD PROVIDE FOR A SHARING OF REVENUES DERIVED FROM MINERAL PRODUCTION FROM THE MARGIN BEYOND 200 NAUTICAL MILES WITH THE INTERNATIONAL COMMUNITY. THE FORMULA WHICH WAS THE PRIMARY FOCUS OF ATTENTION CALLED FOR REVENUE SHARING OF ONE

PERCENT OF THE VALUE OF PRODUCTION AT THE SITE IN THE SIXTH YEAR OF PRODUCTION, INCREASING IN ANNUAL INCREMENTS OF ONE PERCENT TO A MAXIMUM OF FIVE PERCENT IN THE TENTH YEAR AND THEREAFTER.

THE CONCEPTS OF THESE FORMULAS SEEM TO BE GAINING SUBSTANTIAL SUPPORT. THE ORGANIZATION(S) WHICH WOULD COLLECT AND DISTRIBUTE REVENUES HAS YET TO BE AGREED. DISCUSSION, HOWEVER, DID FOCUS ON BOTH THE REGIONAL AND OTHER DEVELOPMENT ORGANIZATIONS AND THE INTERNATIONAL SEABED RESOURCE AUTHORITY (ISRA) AS MEDIUMS OF DISTRIBUTION. IT IS AN IMPORTANT ELEMENT IN THE ACCOMMODATION THAT ALL AREAS OF THE MARGIN BEYOND 200 MILES WHICH WOULD BE RECOGNIZED AS UNDER COASTAL STATE JURISDICTION FOR RESOURCE PURPOSES BE SUBJECT TO REVENUE SHARING OBLIGATIONS. IF CERTAIN LARGE AREAS OF THE MARGIN UNDER COASTAL STATE RESOURCE JURISDICTION IS EXCLUDED, THE REVENUES FOR THE INTERNATIONAL COMMUNITY WILL BE SIGNIFICANTLY REDUCED.

NOTE BY OC/T: #AS RECEIVED.

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PAGE 01 USUN N 03788 05 OF 08 172235Z

64

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 OIC-02 FEA-01 ACDA-10 AGR-10

AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-04 ERDA-07 FMC-02 TRSE-00

H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02

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SAL-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 /192 W

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P 172107Z SEP 76

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TO SECSTATE WASHDC PRIORITY 9228

UNCLAS SECTION 5 OF 8 USUN 3788

FROM LOS DEL

LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES
(LL/GDS)

A SIGNIFICANT NUMBER OF LL/GDS AT THIS CONFERENCE HAVE PRESSED TO HAVE THEIR INTERESTS ACCOMMODATED. A SUCCESSFUL CONCLUSION OF THE TREATY WILL HAVE TO TAKE THESE INTERESTS INTO ACCOUNT. THEY HAVE BEEN PARTICULARLY ACTIVE IN SEEKING THREE OBJECTIVES: (1) ACCESS TO THE SEA AND TRANSIT RIGHTS; 2) REVENUES FROM THE CONTINENTAL MARGIN BEYOND 200 NAUTICAL MILES, AND (3) ACCESS AND PREFERENTIAL RIGHTS TO LIVING RESOURCES IN THE ECONOMIC ZONES OF NEIGHBORING STATES OR STATES IN THE REGION. WHILE SOME PROGRESS CAN BE SEEN IN THE FIRST TWO CATEGORIES, IT IS THE THIRD WHERE THERE HAS BEEN GREATER CONTROVERSY. AT ISSUE ARE SUCH PROBLEMS AS WHETHER LL AND GDS SHOULD HAVE PREFERENCE TO FISHERIES OVER THIRD STATES IN THE REGION; WHETHER THAT PREFERENCE SHOULD ONLY BE TO THE SURPLUS; WHETHER LANDLOCKED SHOULD

UNCLASSIFIED

PAGE 02 USUN N 03788 05 OF 08 172235Z

BE TREATED DIFFERENTLY FROM GDS; AND WHETHER A DISTINCTION SHOULD BE MADE BETWEEN DEVELOPING AND DEVELOPED STATES.

THE UNITED STATES RECOGNIZED THIS AS AN IMPORTANT ISSUE, AND HAS ENCOURAGED ATTEMPTS BY THE GROUP OF COASTAL STATES AND THE LL AND GDS GROUP TO FIND AN APPROPRIATE ACCOMMODATION. A SMALL GROUP OF STATES REPRESENTING THE RESPECTIVE INTERESTS HAS COMMENCED NEGOTIATIONS AND HAS BEFORE IT A TEXT FOR CONSIDERATION. THIS IS A VERY ENCOURAGING DEVELOPMENT WHICH WILL HOPEFULLY COME TO FRUITION.

IN CONJUNCTION WITH THE RAISING OF FISHERY RESOURCE ISSUES IN THE ZONE BY LL AND GDS COUNTRIES, THE TUNA ARTICLE RECEIVED SOME RENEWED ATTENTION, BUT THERE WAS NO WIDELY DISPLAYED INTEREST IN AMENDING THE ARTICLE. PRINCIPLES WERE OFFERED FAVORING A MORE COASTALLY-ORIENTED ARTICLE, AND WERE SUPPORTED BY A LIMITED NUMBER OF STATES, SEVERAL OF WHOM MAY NOT HAVE HAD AN INTEREST IN TUNA, BUT DID PREFERE THE STRENGTHENING OF THE ECONOMIC ZONE CONCEPT. THE US MAINTAINS THAT HIGHLY MIGRATORY SPECIES SHOULD BE ACCORDED SPECIAL TREATMENT IN THE ECONOMIC ZONE WITHIN THE FRAMEWORK OF A REGIONAL REGULATING REGIME.

STRAITS USED FOR INTERNATIONAL NAVIGATION

LATE IN THIS SESSION, THE CHAIRMAN OPENED THE QUESTION OF STRAITS FOR DISCUSSION. THE STRAITS ARTICLES PROVIDE THE REGIME OF TRANSIT PASSAGE ESSENTIAL TO ADOPT TO TERRITORIAL SEA GLOBAL LIMIT OF TWELVE NAUTICAL MILES.

THE DISCUSSIONS HAVE CLEARLY INDICATED THAT ONLY A SMALL NUMBER OF STATES HAVE DIFFICULTY WITH THE ARTICLES. A FEW, BUT NOT ANY SUBSTANTIAL NUMBER, OF STRAIT STATES ARE SEEKING CHANGES. THESE CHANGES VARY ACCORDING TO EACH STATE'S GEOGRAPHICAL LOCATION AND CONFIGURATION.

BECAUSE THERE IS A LONG HISTORY OF PRIOR NEGOTIATION
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 USUN N 03788 05 OF 08 172235Z

ON THE STRAITS ARTICLES, SUBSTANTIVE CHANGE IN THE TEXT APPEARS UNLIKELY.

DELIMITATION BETWEEN OPPOSITE AND ADJACENT STATES

THIS ISSUE WAS ALSO ADDRESSED LATE IN THE SESSION. THE MAJOR OUTSTANDING QUESTIONS INVOLVE WHETHER THE PRIMARY METHOD OF DELIMITATION SHOULD BE ACCORDING TO EQUITY, OR BY THE APPLICATION OF THE EQUIDISTANCE LINE, AND AS IT IS GENERALLY AGREED THAT THE SOLUTION IS TO BE ACHIEVED BY AGREEMENT BETWEEN THE PARTIES, HOW THE MATTER SHOULD BE TREATED DURING THE INTERVAL PENDING AGREEMENT.

THE PRESENT TEXT PROVIDES FOR AGREEMENT ACCORDING TO EQUITABLE PRINCIPLES TAKING INTO ACCOUNT, WHERE APPROPRIATE, THE MEDIAN OR EQUIDISTANCE LINE. SINCE THE UNDERLYING PROBLEMS ARE ESSENTIALLY BILATERAL, THE DEBATES HAVE BEEN CONFUSED AND INVOLVED NO AGREEMENT WAS REACHED ON WHETHER OR HOW THE TEXT MIGHT BE AMENDED.

OTHER ISSUES

THE CHAIR PROVIDED LIMITED TIME AT THE END OF THIS SESSION FOR COUNTRIES TO RAISE ISSUES OF IMPORTANCE TO THEM OTHER THAN THOSE ISSUES ALREADY DISCUSSED IN SPECIFIC INFORMAL NEGOTIATING GROUPS. THE QUESTIONS DRAWING THE MOST COMMENT WERE: 1) THE RIGHT OF THE COASTAL STATE TO ESTABLISH DESIGN, CONSTRUCTION, MANNING AND EQUIPMENT STANDARDS FOR SHIPS IN THE TERRITORIAL SEAS; (2) ARCHIPELAGOES; (3) THE BREADTH OF THE TERRITORIAL SEAS; (4) ENCLOSED AND SEMI-ENCLOSED SEAS; (5) BASELINES; AND (6) MID-

OCEAN ARCHIPELAGOES WHO ARE NOT STATES. NONE OF THESE DISCUSSIONS DREW SUFFICIENT ATTENTION TO WARRANT FORMAL ACTION BY THE COMMITTEE, ALTHOUGH THE CHAIRMAN ENCOURAGED FURTHER NEGOTIATIONS AMONG INTERESTED STATES, AND NOTED THE NEED FOR APPROPRIATE COORDINATION BETWEEN THE SECOND AND THIRD COMMITTEES ON THE FIRST ISSUE. QUESTIONS CONCERNING STANDARDS FOR MANAGEMENT OF LIVING RESOURCES RECEIVED SCANT ATTENTION; AND MARINE MAMMALS WERE NOT DISCUSSED. THE TRANSITIONAL PROVISION ALSO WAS TOUCHED UPON.

UNCLASSIFIED

PAGE 04 USUN N 03788 05 OF 08 172235Z

MENT OF LIVING RESOURCES RECEIVED SCANT ATTENTION; AND MARINE MAMMALS WERE NOT DISCUSSED. THE TRANSITIONAL PROVISION ALSO WAS TOUCHED UPON.

COMMITTEE III

IM MARINE SCIENTIFIC RESEARCH

A. U.S. OBJECTIVES: THE RSNT REQUIRES CONSENT OF THE COASTAL STATE FOR ALL SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE, BUT PROVIDES THAT THE COASTAL STATE MAY WITHHOLD IT CONSENT ONLY FOR CERTAIN SPECIFIED SCIENTIFIC RESEARCH ACTIVITIES. THE U.S. POSITION IS THAT THERE SHOULD NOT BE AN OVERALL CONSENT REQUIREMENT, BUT CONSENT SHOULD BE REQUIRED ONLY FOR SPECIFIED MARINE SCIENTIFIC RESEARCH ACTIVITIES -- OTHER SCIENTIFIC RESEARCH ACTIVITIES SHOULD BE CONDUCTED UPON COMPLIANCE WITH SPECIFIED CRITERIA DESIGNED TO PROTECT COASTAL STATE INTERESTS. THESE CRITERIA INCLUDE ADVANCE NOTIFICATION TO THE COASTAL STATE, THEIR PARTICIPATION IN THE RESEARCH PROJECT, AND SHARING OF DATA AND SAMPLES. IN ADDITION, THE U.S. HAS ALSO SOUGHT TO ENSURE THAT PRACTICAL PROTECTIONS FOR RESEARCHING AND COASTAL STATES ARE IMPROVED. THESE PROTECTIONS INCLUDE AN EFFECTIVE TACIT CONSENT PROCEDURE AND PUBLICATION OF BINDING DISPUTE SETTLEMENT PROCEDURES TO ALL DISPUTES CONCERNING SCIENTIFIC RESEARCH.

B. NEGOTIATIONS AT THIS SESSION: MOST DEVELOPING COASTAL COUNTRIES SUPPORTED A CONSENT REGIME OF SOME TYPE FOR SCIENTIFIC RESEARCH. ONLY ONE OR TWO COUNTRIES CONTINUED TO ARGUE FOR A TOTAL, UNQUALIFIED DISCRETIONARY CONSENT

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PAGE 01 USUN N 03788 06 OF 08 172242Z

64

ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 OIC-02 FEA-01 ACDA-10 AGR-10

AID-05 CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-04 ERDA-07 FMC-02 TRSE-00

H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02

OES-06 OMB-01 PA-02 PM-04 PRS-01 SP-02 SS-15 USIA-15

SAL-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 /192 W

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P 172107Z SEP 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC PRIORITY 9229

UNCLAS SECTION 6 OF 8 USUN 3788

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REGIME. MOST URGED, AS A COMPROMISE, AN OVERALL CONSENT REQUIREMENT WITH A SPECIFIC LIST OF CRITERIA FOR DENYING CONSENT. IN PARTICULAR, THERE WAS A GENERAL WILLINGNESS TO REMOVE FROM THE CRITERIA RESEARCH PROJECTS WHICH INTERFERE WITH ECONOMIC ACTIVITIES, PROVIDED THAT A CLEAR TREATY OBLIGATION ON RESEARCHING STATES NOT TO INTERFERE WAS INCLUDED.

ON THE QUESTION OF TACIT CONSENT, THERE WAS ONLY A FEW RESERVATIONS WITH MOST DELEGATIONS INDICATING THAT THIS WAS NOT AN ISSUE OF PRINCIPLE.

THERE WAS NO DETAILED DISCUSSION OF DISPUTE SETTLEMENT IN THE THIRD COMMITTEE ALTHOUGH THE QUESTION OF THE APPLICATION OF DISPUTE SETTLEMENT TO SCIENTIFIC RESEARCH WAS DISCUSSED IN THE INFORMAL PLENARY DISCUSSIONS ON PART IV.

SECY. KISSINGER MET WITH A NUMBER OF DELGATES TO
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UNCLASSIFIED

PAGE 02 USUN N 03788 06 OF 08 172242Z

DISCUSS SCIENTIFIC RESEARCH IN AN EFFORT TO FIND AN ACCEPTABLE COMPROMISE. HE UNDERScoreD THE IMPORTANCE OF THE ISSUE TO THE UNITED STATES AND THE STRONG OPPOSITION TO RATIFICATION OF THE TREATY BY THE AMERICAN SCIENTIFIC

COMMUNITY WHICH COULD RESULT IF THE PRESENT TEXT IS NOT CHANGED.

THROUGHOUT THIS SESSION, THE CHAIRMAN OF COMMITTEE III (YANKOV-BULGARIA) SEEMED INTENT ON PUSHING THE RSNT AND AN INFORMAL PROPOSAL HE PREPARED AS THE BASIS FOR COMPROMISE. THE REPORT PREPARED BY THE COMMITTEE CHAIRMAN REFLECTS ONLY HIS OWN INFORMAL TEXT, DISREGARDING A VARIETY OF PROPOSALS THAT HAD BEEN PUT FORWARD. THIS IS UNFORTUNATE SINCE INFORMAL NEGOTIATIONS HAD MADE IT CLEAR THAT HIS INFORMAL PROPOSAL COULD NOT SERVE AS A BASIS FOR AN ACCEPTABLE COMPROMISE.

AT THE END OF THE SESSION, AUSTRALIA INFORMALLY PROPOSED A NEW COMPROMISE WHICH REQUIRED CONSENT FOR ALL SCIENTIFIC RESEARCH, BUT LIMITED THE CRITERIA FOR DENYING CONSENT. THIS PROPOSAL WAS CIRCULATED TO ALL DELEGATIONS, RECEIVED SOME FAVORABLE COMMENTS, AND THE CHAIRMAN ENCOURAGED THE AUSTRALIANS TO CONTINUE THEIR EFFORTS.

IN ADDITION TO SUBSTANTIVE PROBLEMS DIRECTLY RELATED TO SCIENTIFIC RESEARCH, THE NEGOTIATIONS HAVE BEEN MADE MORE DIFFICULT BY THE PERCEIVED LINKAGE OF THIS ISSUE WITH THE QUESTION OF THE NATURE OF THE ECONOMIC ZONE. THE ISSUES ARE LINKED IN THE CONFERENCE AND THE NEGOTIATION OF FINAL SOLUTIONS TO BOTH MUST BE COORDINATED.

OVERALL, THE CONFERENCE IS NOT MUCH CLOSER TO AGREEMENT ON MARINE SCIENTIFIC RESEARCH THAN WE WERE AT THE BEGINNING OF THE SESSION. THE U.S. PROPOSAL OF LIMITING CONSENT TO CERTAIN SPECIFIED TYPES OF SCIENTIFIC RESEARCH MET WITH OPPOSITION. HOWEVER, THE POSITION OF A NUMBER OF DEVELOPING COASTAL COUNTRIES TO REQUIRE DISCRETIONARY CONSENT IN VIRTUALLY ALL CASES ALSO MET SIGNIFICANT OPPOSITION.

II. MARINE POLLUTION

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PAGE 03 USUN N 03788 06 OF 08 172242Z

A. U.S. OBJECTIVES: THE PRINCIPLE OBJECTIVE WAS TO STRIKE A BALANCE BETWEEN PROTECTION OF THE MARINE ENVIRONMENT AND FACILITATION OF NAVIGATION AND TRADE. IN PRINCIPLE, PART III OF THE RSNT DOES SO. THE SPECIFIC OBJECTIVES OF THE U.S. WERE: (A) TO ENSURE THAT THE COASTAL STATE HAS AUTHORITY TO ESTABLISH AND ENFORCE STANDARDS FOR ALL VESSELS NAVIGATING IN INNOCENT PASSAGE IN ITS TERRITORIAL SEA, (B) TO STRENGTHEN THE NEW PORT STATE ENFORCEMENT REGIME, (C) TO PRESERVE THE CAREFUL BALANCE BETWEEN COASTAL STATE AND NAVIGATIONAL RIGHTS IN THE ECONOMIC ZONE, AND (D) TO EXTEND THE FLAG STATE OBLIGATION TO INCLUDE

DEEP SEA MINING VESSELS. ADDITIONALLY, WE HAD PREPARED A NUMBER OF CLARIFYING AMENDMENTS TO THE VESSEL POLLUTION AND OTHER ARTICLES.

B. NEGOTIATIONS AT THIS SESSION: AT THE OUTSET OF THE SESSION, CHAIRMAN YANKOV (BULGARIA) IDENTIFIED THE ISSUE OF STANDARD SETTING IN THE TERRITORIAL SEA AS THE MAJOR OUTSTANDING ISSUE. THE U.S. AND SEVERAL OTHER STATES PROPOSED DELETING RESTRICTIONS NOT TO HAMPER INNOCENT PASSAGE. ALL OF THE MARITIME STATES AND A NUMBER OF DEVELOPING COUNTRIES WITH MARITIME ASPIRATIONS, OPPOSED THIS POSITION. CHAIRMAN YANKOV INDICATED THAT THE ISSUE WAS NOT RESOLVED AND THAT FURTHER DISCUSSIONS WERE NEEDED.

INFORMAL COMMITTEE AND SMALL GROUP NEGOTIATING SESSIONS WERE HELD CONTINUOUSLY DURING THE SESSION TO DISCUSS OTHER ASPECTS OF VESSEL SOURCE POLLUTION. LARGE NUMBERS OF AMENDMENTS WERE SUGGESTED, MOST OF WHICH WOULD UPSET THE DELICATE BALANCE BETWEEN COASTAL AND PORT STATE POWERS TO PROTECT THE ENVIRONMENT AND THE RIGHTS OF NAVIGATION. WITH FEW EXCEPTIONS, THE AMENDMENTS RECEIVED LITTLE SUPPORT AND THE EXISTING TEXT WAS CONFIRMED.

A NEW PARAGRAPH RELATING TO COASTAL STATE RIGHTS TO ESTABLISH STANDARDS IN SPECIAL AREAS OF THE ECONOMIC ZONE WAS NEGOTIATED AND GENERALLY AGREED. THE TEXT CLARIFIES THE PROCEDURE FOR ESTABLISHING SUCH STANDARDS AND ASSIGNS A MAJOR ROLE TO THE COMPONENT INTERNATIONAL ORGANIZATION (IMCO). TIME AND THE ADOPTED PROCEDURE
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UNCLASSIFIED

PAGE 04 USUN N 03788 06 OF 08 172242Z

DID NOT PERMIT THE DISCUSSION OF THE OTHER ISSUES RELATED TO THE U.S. OBJECTIVES. THESE REMAIN TO BE DISCUSSED AT THE NEXT SESSION.

III. TRANSFER OF TECHNOLOGY

THE DISCUSSIONS ON THIS ISSUE WERE VERY BRIEF, AND IT IS CLEAR THAT THE EXISTING TEXT DOES NOT PROVIDE AN ANSWER. A FEW DEVELOPING COUNTRIES CONTINUE TO SEEK TO REQUIRE THE TRANSFER OF ALL DEEP SEABED MINING TECHNOLOGY, WHETHER PATENTED OR NOT. MOST SEEM INTERESTED ONLY IN TECHNOLOGY OWNED BY THE SEABED AUTHORITY AND IN GAINING RIGHTS TO THAT TECHNOLOGY. HOWEVER, THE ISSUE IS CLEARLY SO INTERTWINED WITH COMMITTEE I NEGOTIATIONS THAT NO PROGRESS WAS MADE ON THIS ISSUE IN COMMITTEE III.

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UNCLASSIFIED

PAGE 01 USUN N 03788 07 OF 08 172254Z

62

ACTION IO-13

INFO OCT-01 ISO-00 OIC-02 FEA-01 ACDA-10 AGR-10 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-02 COME-00 DLOS-06

DODE-00 DOTE-00 EB-07 EPA-04 ERDA-07 FMC-02 TRSE-00

H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02

OES-06 OMB-01 PA-02 PM-04 PRS-01 SP-02 SS-15 USIA-15

SAL-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 /192 W

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P 172107Z SEP 76

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 9230

UNCLAS SECTION 7 OF 8 USUN 3788

DISPUTE SETTLEMENT

A. GENERAL

THE PLENARY OF THE CONFERENCE MET INFORMALLY THROUGH-
OUT THE FIFTH SESSION UNDER THE CHAIRMANSHIP OF
PRES. AMERASINGHE AND, IN HIS ABSENCE FROM AUGUST 5-23,
ACTING PRESIDENT JENS EVENSEN OF NORWAY. THE INFORMAL
PLENARY COMPLETED AN ARTICLE-BY-ARTICLE REVIEW OF THE
SINGLE NEGOTIATING TEXT, PART IV (A/CONF. 62/WP.9/REV.1),
WITH A VIEW TO THE PREPARATION BY THE PRESIDENT OF
A REVISED SINGLE NEGOTIATING TEXT CONCERNING SETTLEMENT
OF DISPUTES. THE PRESIDENT WILL ISSUE A REVISED SINGLE
NEGOTIATING TEXT ON PART IV SHORTLY AFTER THE CLOSE
OF THE SESSION.

A BROAD CROSS-SECTION OF THE MEMBERSHIP OF THE
CONFERENCE PARTICIPATED ACTIVELY IN THE DEBATES.
IT WAS GENERALLY ACCEPTED BY THOSE WHO SPOKE THAT A NEW
LAW OF THE SEA CONVENTION SHOULD INCLUDE A COMPREHENSIVE
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 USUN N 03788 07 OF 08 172254Z

SYSTEM FOR THE OBLIGATORY SETTLEMENT OF DISPUTES RELATING TO THE INTERPRETATION OR APPLICATION OF THE CONVENTION, AND THAT THE PROCEDURES EMPLOYED SHOULD LEAD TO FINAL AND BINDING DECISIONS. THE US STRONGLY SUPPORTED THIS PRINCIPLE. FOR SOME DELEGATIONS, HOWEVER, ACCEPTANCE OF SUCH A SYSTEM WAS MADE CONTINGENT ON THE SATISFACTION OF THEIR OBJECTIVES WITH RESPECT TO CERTAIN ASPECTS OF THE SYSTEM. SPECIFICALLY, SOME COASTAL STATES CONSIDERED A SATISFACTORY EXCLUSION OF DISPUTES RELATING TO THE EXERCISE OF CERTAIN COASTAL STATE'S RIGHTS IN THE ECONOMIC ZONE (ART. 18 OF THE SNT) TO BE CRUCIAL TO THE ACCEPTANCE OF OBLIGATORY DISPUTE SETTLEMENT. OTHER STATES CONSIDERED THE AVAILABILITY OF SPECIFIC PROCEDURES FAVORED BY THEIR GOVERNMENTS, PARTICULARLY THE LAW OF THE SEA TRIBUNAL OR THE SYSTEM OF SPECIAL PROCEDURES, TO BE SIMILARLY ESSENTIAL.

CHOICE OF PROCEDURE

ART. 9 OF THE SNT SET FORTH A PROCEDURE BY WHICH EACH CONTRACTING PARTY COULD CHOOSE TO ACCEPT THE JURISDICTION OF ONE OF FOUR DISPUTE SETTLEMENT PROCEDURES --THE INTERNATIONAL COURT OF JUSTICE, ARBITRATION, THE LAW OF THE SEA TRIBUNAL, OR THE SYSTEM OF SPECIAL PROCEDURES CONTAINED IN ANNEX II. THE PRINCIPLE OF THIS ARTICLE WAS WIDELY ACCEPTED AS THE ESSENTIAL CORE OF A DISPUTE SETTLEMENT CHAPTER THAT COULD BE SUPPORTED BY A CONSENSUS OF THE CONFERENCE. MANY DELEGATIONS DID NOT FAVOR ONE OR ANOTHER OF THE FOUR ALTERNATIVE PROCEDURES. SOME DELEGATIONS DID NOT WISH TO INCLUDE AS AN ALTERNATIVE THE SYSTEM OF SPECIAL PROCEDURES AND A FEW OTHERS DID NOT WISH TO INCLUDE THE LAW OF THE SEA TRIBUNAL AS AN ALTERNATIVE. THE UNITED STATES INDICATED THAT IT HAD NOT DECIDED WHICH OF THE PROCEDURES IT WOULD CHOOSE, AND THEREFORE WOULD SEEK TO MAKE EACH AS EFFECTIVE AS POSSIBLE.

ART. 9 PARAGRAPH 7 OF THE SNT DEALS WITH THE APPROPRIATE PROCEDURE IN A CASE WHERE THE PARTIES TO THE DISPUTE HAD CHOSEN DIFFERENT PROCEDURES, IN WHICH CASE THE PLAINTIFF WOULD BE REQUIRED TO GO TO THE PROCEDURE

UNCLASSIFIED

PAGE 03 USUN N 03788 07 OF 08 172254Z

CHOSEN BY THE DEFENDANT. A NUMBER OF DELEGATIONS, ESPECIALLY THOSE THAT DID NOT FAVOR PRE-CONSTITUTED TRIBUNALS, SUGGESTED THAT ARBITRATION SHOULD BE THE PROPER PROCEDURE IN SUCH A CASE. A FEW FAVORED THE PROCEDURE

CHOSEN BY THE PLAINTIFF. THE UNITED STATES SUGGESTED GIVING THE PLAINTIFF A CHOICE BETWEEN THE PROCEDURE CHOSEN BY THE DEFENDANT AND ARBITRATION.

C. EXCEPTIONS

ART. 18, PARAGRAPH 1 OF THE SNT EXCLUDED CERTAIN DISPUTES RELATING TO THE EXERCISE OF SOVEREIGN RIGHTS, EXCLUSIVE RIGHTS OR EXCLUSIVE JURISDICTION BY A COASTAL STATE FROM THE OBLIGATION TO SETTLE DISPUTES IN ACCORDANCE WITH THE PROCEDURES IN THE CONVENTION. A NUMBER OF EXCEPTIONS ARE THEN MADE TO THIS EXCLUSION FOR DISPUTES RELATING TO INTERFERENCES WITH NAVIGATION, OVERFLIGHT, SUBMARINE CABLES AND PIPELINES, SUBSTANTIVE RIGHTS SPECIFICALLY ESTABLISHED BY THE CONVENTION AND TO CERTAIN ENVIRONMENTAL MATTERS. THE EFFECT OF THIS APPROACH IS THAT THE EXCEPTIONS TO THE EXCLUSION DESCRIBE THE MATTERS THAT WOULD BE SUBJECT TO OBLIGATORY DISPUTE SETTLEMENT.

GENERALLY SPEAKING, THE COASTAL STATES SOUGHT TO RESTRICT THE EXCEPTIONS TO THE EXCLUSION, FOCUSING IN PARTICULAR ON A DESIRE TO DELETE THE EXCEPTIONS CLAUSE DEALING WITH RIGHTS SPECIFICALLY ESTABLISHED BY THE CONVENTION. THESE STATES STRONGLY OPPOSED DISPUTE SETTLEMENT FOR FISHERIES. THE UNITED STATES AND SEVERAL MARITIME AND DISTANT-WATER FISHING STATES SOUGHT TO BROADEN THE EXCEPTIONS, ESPECIALLY WITH RESPECT TO FISHERIES. THERE WAS INSUFFICIENT DISCUSSION OF A POSSIBLE COMPROMISE WHEREBY OBLIGATORY DISPUTE SETTLEMENT WOULD APPLY TO FISHERIES DISPUTES WITH PROTECTION FOR THE COASTAL STATE FROM HARASSING ACTIONS ARISING FROM THE EXERCISE OF ITS DISCRETION IN ACCORDANCE WITH THE CONVENTION.

A NUMBER OF STATES INSISTED THAT DISPUTES RELATING TO MARITIME BOUNDARIES, DEALT WITH IN ART. 18, PARAGRAPH 2 (A) OF THE SNT, BE EXCLUDED FROM THE JURISDICTION

UNCLASSIFIED

PAGE 04 USUN N 03788 07 OF 08 172254Z

OF ANY DISPUTE SETTLEMENT PROCEDURE AT THE OPTION OF A CONTRACTING PARTY. SEVERAL DID NOT BELIEVE THAT AN OPTIONAL EXCLUSION SHOULD BE AVAILABLE FOR DISPUTES CONCERNING MILITARY ACTIVITIES, AS PROVIDED BY ART. 18, PARAGRAPH 2 (B) OF THE SNT.

D. ACCESS TO DISPUTE SETTLEMENT PROCEDURES

MOST DELEGATIONS GENERALLY ACCEPTED THAT THE DISPUTE SETTLEMENT PROCEDURES SHOULD BE AVAILABLE TO ALL CONTRACTING PARTIES AND, WITH RESPECT TO DISPUTES

UNDER CONTRACTS WITH THE INTERNATIONAL SEABED AUTHORITY, TO THE AUTHORITY AND ITS CONTRACTORS. MANY DELEGATIONS OPPOSED ACCESS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS OR PRIVATE PERSONS, NATURAL OR JURIDICAL. THE US AND SEVERAL EUROPEAN STATES SUPPORTED ACCESS FOR OWNERS AND MASTERS OF VESSELS TO REQUEST RELEASE ON BOND OF DETAINED VESSELS AS PROVIDED BY ARTICLE 15. NOTING THAT THIS WOULD NOT ENTAIL A DECISION ON THE MERITS OF A DETENTION, BUT ONLY A PROCEDURE TO FACILITATE PROMPT RELEASE OF THE VESSEL ON BOND. WITH RESPECT TO THE LAW OF THE SEA TRIBUNAL, A FEW DELEGATIONS SUGGESTED THAT ENTITIES THAT HAD BEEN OBSERVERS AT THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA SHOULD HAVE ACCESS TO THE PROCEDURES.

E. THE LAW OF THE SEA TRIBUNAL

SEVERAL DELEGATIONS OPPOSED THE CREATION OF A NEW LAW OF THE SEA TRIBUNAL WHILE MANY SUPPORTED IT. THOSE WHO DID NOT LIKE IT INSISTED THAT THE ENTIRE SYSTEM BE STRUCTURED SO THAT THEY COULD NOT BE FORCED TO GO BEFORE IT, IN WHICH CASE THEY WOULD NOT OBJECT TO ITS CREATION AS AN OPTION FOR THOSE WHO FAVORED IT. THE UNITED STATES INDICATED THAT IT COULD SUPPORT THE CREATION OF A WELL-CONSTITUTED TRIBUNAL.

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PAGE 01 USUN N 03788 08 OF 08 172218Z

71

ACTION DLOS-06

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UNCLAS SECTION 8 OF 8 USUN 3788

WITH RESPECT TO THE COMPOSITION OF A NEW TRIBUNAL, PRES. AMERASINGHE ANNOUNCED SNT AMENDMENTS SO THAT ALLOCATION OF SEATS ON THE TRIBUNAL BY REGION WOULD BE DELETED AND THE SELECTION BE MADE BY A CONFERENCE OF CONTRACTING PARTIES ON THE BASIS ASSURING REPRESENTATION OF THE PRINCIPLE LEGAL SYSTEMS OF THE WORLD AND EQUITABLE GEOGRAPHICAL DISTRIBUTION, PROVIDED THAT EACH REGIONAL GROUP WOULD HAVE AT LEAST TWO SEATS.

F. THE SYSTEM OF SPECIAL PROCEDURES
MOST DELEGATIONS CRITICIZED, AND SEVERAL OPPOSED, THE SYSTEM OF SPECIAL PROCEDURES CONTAINED IN ANNEX II. AMONG THE PRINCIPLE CRITICISMS WERE THE UNWORKABILITY OF THE PROHIBITION ON INTERPRETATION (AS DISTINGUISHED FROM APPLICATION OF THE CONVENTION) BY SPECIAL COMITES, THE LIMITATION OF MEMBERSHIP ON THE COMITES TO SCIENTIFIC AND TECHNICAL EXPERTS, THE ALLEGED DEVELOPED COUNTRY BIAS OF EXPERTS, AND THE DELAY AND DISPUTES THAT WOULD BE OCCASIONED BY THE NEED FOR APPEALS AND THE REFERENCE OF QUESTIONS OF INTERPRETATION TO ANOTHER PROCEDURE. PROPOSED
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PAGE 02 USUN N 03788 08 OF 08 172218Z

NENTS OF THE SPECIAL PROCEDURES AGREED THAT THE SPECIAL COMITES COULD BE AUTHORIZED BOTH TO INTERPRET AND APPLY THE CONVENTION AND MAY INCLUDE JURIDICAL EXPERTS IN THEIR COMPOSITION, THUS ELIMINATING THE NEED FOR APPEALS OR REFERRALS.

G. RELATION TO PART I PROCEDURES

SEVERAL MEMBERS OF THE GROUP OF 77 TOOK THE VIEW THAT THE SEABEDS TRIBUNAL CONTAINED IN PART I OF THE REVISED SINGLE NEGOTIATING TEXT SHOULD BE MERGED WITH THE LAW OF THE SEA TRIBUNAL CONTAINED IN PART IV OF THE SINGLE NEGOTIATING TEXT. SUCH A MERGER WOULD RESULT IN A SINGLE TRIBUNAL WITH A SPECIAL CHAMBER FOR DISPUTES ARISING UNDER PART I, AND A GENERAL CHAMBER FOR OTHER DISPUTES. FOR THESE DELEGATIONS, LARGE PARTS OF THE DISCUSSION ON PART IV WERE UNDERTAKEN SUBJECT TO THE SUBSEQUENT RESOLUTION OF THIS ISSUE. IT WAS NOT DEBATED AT THIS SESSION OF THE CONFERENCE AND REMAINS AN IMPORTANT ITEM FOR FUTURE CONSIDERATION.

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